

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEBORAH YOUNG BRUCE and RESOLUTION TRUST CORPORATION,
WESTERN REGION, Newport Beach, Calif.

*Docket No. 96-845; Submitted on the Record;
Issued February 12, 1998*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant filed a timely claim for compensation under the three-year time limitation of section 8122 of the Federal Employees' Compensation Act.

The Board has given careful consideration to the issue involved and the entire case record. The Board finds that the decision of the hearing representative of the Office of Workers' Compensation Programs dated and finalized November 7, 1995 is in accordance with the facts and law in this case, and hereby adopts the findings and conclusions of the hearing representative.

Section 8122 of the Act provides that original claims for compensation for disability or death must be filed within 3 years after the injury or death unless the immediate superior had actual knowledge of the injury or death within 30 days or written notice of injury or death was given within 30 days. In a case of latent disability, the time for filing a claim does not begin to run until the employee has a compensable disability and is aware or by exercise of reasonable diligence should have been aware of the causal relationship of the compensable disability to his or her employment.¹

In this case, appellant filed a notice of occupational disease and claim for compensation (Form CA-2) signed by the employing establishment on April 26, 1994,² for a herniated cervical disc and other musculoskeletal conditions. On this form, appellant indicated that she first realized her condition was employment related on September 10, 1990, and that she last worked for the employing establishment on March 15, 1991.

¹ 5 U.S.C. § 8122.

² The record contains a March 18, 1994 letter to appellant from the employing establishment acknowledging receipt of her claim. However, March 18, 1994 is beyond the three-year time limit that began on March 15, 1991.

Appellant was informed by November 3, 1994 decision that her April 26, 1994 claim was not timely filed as the three-year time limitation began to run on March 15, 1991, ending on March 14, 1994. Appellant then alleged that she was not aware that her condition was work related until February 1994 after a Social Security disability hearing. However, the record indicates that on April 11, 1990, appellant stated to an emergency room physician that she believed her left upper extremity symptoms were related to driving while in the performance of duty.

As the Office found in its November 3, 1994 decision and affirmed in its November 7, 1995 decision, appellant should have been aware, by exercise of reasonable diligence of the possible causal relationship of her condition to her employment as early as April 11, 1990, approximately six months prior to the September 10, 1990 date appellant provided on her claim form. However, the Office used March 15, 1991, the date appellant stopped work at the employing establishment, to calculate the three-year time limitation.

Also, appellant has not submitted evidence demonstrating that her immediate supervisor had knowledge of the claimed condition's possible relationship to her employment within 30 days of appellant stopping work. In June 6 and July 29, 1994 statements, the employing establishment emphasized that appellant did not mention that she believed her September 10, 1990 neck surgery or March 15, 1991 resignation were work related. Appellant's March 15, 1991 letter of resignation mentions that, in addition to personal and family issues which required more of her time, handling luggage while on temporary duty assignments aggravated her neck condition. However, appellant did not state that handling luggage or any other factor of her federal employment caused her neck condition. Therefore, this letter cannot be construed as a writing from which the substance of a claim could be reasonably deduced.³

Therefore, the Office properly found that appellant's claim was not timely filed under the three-year time limitation of 5 U.S.C. § 8122.

³ See *Dale M. Newbigging*, 44 ECAB 551 (1993).

The decision of the Office of Workers' Compensation Programs dated and finalized November 7, 1995 is hereby affirmed.

Dated, Washington, D.C.
February 12, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member